

# **भारत का राजपत्र** **The Gazette of India**

प्रसाधारण

EXTRAORDINARY

भाग II—खण्ड 3—उपखण्ड (ii)

PART II—Section 3—Sub-section (ii)

प्राधिकार से प्रकाशित

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NEW DELHI, TUESDAY, APRIL 18, 1967/CHAITRA 28, 1889

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके ।

Separate paging is given to this Part in order that it may be filed as a separate compilation.

## MINISTRY OF LABOUR, EMPLOYMENT AND REHABILITATION

(Department of Labour and Employment)

### NOTIFICATION

New Delhi, the 18th April 1967

S.O. 1437.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Orissa, in the matter of the application under Section 33A of the said Act, from Shri Sitaram and others C/o North Orissa Workers' Union, Rourkela and the General Manager, Hindustan Steel Limited, Rourkela, and Proprietor Messrs N.S. Corporation, Contractor, Hindustan Steel Limited, Rourkela which was received by the Central Government on the 29th March, 1967.

BEFORE THE PRESIDING OFFICER, LABOUR COURT, ORISSA,  
BHUBANESWAR

#### PRESENT:

Shri I. C. Misra, M.A., B.L., Presiding Officer, Labour Court.

MISC. CASE Nos. 22 TO 130 OF 1966

Dated Bhubaneswar, the 21st March, 1967

#### BETWEEN

Sitaram and others C/o North Orissa Workers' Union  
Rourkela-1.—Complainants.

AND

- |  |                     |
|--|---------------------|
| 1. General Manager, Hindustan Steel Limited, Rourkela        | } Opposite parties. |
| 2. The Proprietor M/s. N. S. Corporation, Contractor, H.S.L. |                     |

## APPEARANCES

Shri A. P. Das, General Secretary, North Orissa Workers' Union—*For the Complainants.*

AND

1. Shri B. B. Rath, Advocate

2. Shri Y. P. Srivastava.

*For the Opposite parties.*

## AWARD

These cases arise out of 109 complaints filed under section 33A, Industrial Disputes Act, 1947. As the same questions of law and facts are involved in all these cases, they are taken up together for consideration. This award shall govern all the 109 complaints.

2. It appears that the management of Hindustan Steel Limited had employed some workmen to work in its Purunapani Lime Stone Quarry in the District of Sundargarh. Subsequently, Messrs N. S. Corporation and others entered into a contract with the management of Hindustan Steel Limited to engage labour and supply the materials from the said quarry. On 22nd September, 1964, in course of a conciliation proceeding, a settlement was arrived at between the management of Hindustan Steel Limited and their workmen employed in the said quarry, represented by the North Orissa Workers' Union. According to this settlement, the workers became eligible to draw wages at a higher rate with effect from 1st January, 1964, as per the recommendation of the Central Wage Board for Lime Stone and Dolomite Mining Industries. In pursuance of the aforesaid settlement, the management made a partial payment for the first nine months of 1964. As the balance was not paid for the aforesaid period as also no increment was given for the subsequent period ending with July 1965, the workmen, through the General Secretary of North Orissa Workers' Union, presented applications under section 33C(2), I.D. Act on 26th August, 1965, before this Labour Court. The employer was described as Hindustan Steel Limited through its contractor M/s. N.S. Corporation. These applications are still pending for disposal. In the meantime, in August, 1966, the proprietor of N.S. Corporation, the contractor, gave one month's notice to the workmen of the quarry to retrench them with effect from 17th September, 1966. But before issuing such notice permission of the Labour Court where the applications under section 33C(2) are pending, was not taken. Accordingly, on 31st August, 1966, all these complaints under section 33A, I.D. Act were prepared and sent to the Labour Court by 17th September, 1966. The General Secretary subsequently informed that the retrenchment has been effected on 17th September, 1966, on the expiry of the notice period. It is alleged that the management of Hindustan Steel Limited has conspired with the proprietor of N.S. Corporation to throw the complainants out of employment and thereby to evade the payment of legitimate dues of the employees. It is further alleged that the complainants are engaged in the mining operation of the Purunapani Lime Stone Quarry which is a perennial work. So it is desired that the complaints should be decided as it is fit and proper. These complaints were opposed both by the management of Hindustan Steel Limited and N.S. Corporation. They took the preliminary objection that the complaints are not maintainable in law. In this connection reliance was placed on the case of *Sendra Bansjora Colliery Pt. Limited vs. Shantilal* (1963-Labour Law Journal, Vol. II, page 331—Patna High Court).

3. In my opinion, the contention raised on behalf of Hindustan Steel Limited and the contractor is sound. Admittedly, no reference under section 10, I.D. Act was pending adjudication before this Labour Court during the second half of 1966, when the complainants were retrenched; but the applications filed by them or on their behalf under section 33C(2) were pending disposal at that time. The obligation cast on the employer by sub-sections 1 to 3 of section 33, Industrial Disputes Act becomes operative only during the pendency of any proceeding before a Labour Court in respect of an Industrial Dispute. If, on the relevant date of retrenchment, no proceeding in respect of an industrial dispute was pending before the Labour Court, it would not be necessary for the employer to seek for the permission or approval of the Labour Court to alter the conditions of service of the workmen to their prejudice or to take any punitive action for some mis-conduct. The question, that, therefore, arises for consideration is whether the pendency of the applications under section 33C(2) can be equated to pendency of any proceeding in respect of an industrial dispute. The Supreme Court after analysing the legislative history of section 33C in *Central Bank of India Limited vs. Rajagopalan* (1963-Labour Law Journal, Vol. II, page 89 at page 94) observed as follows: "On construing section 33C, we have to bear in mind two relevant considerations. The construction should not be so broad as to bring within the scope of section 33C cases which would fall under section 10(1).

Where industrial disputes arise between employees acting collectively and their employers, they must be adjudicated upon in the manner prescribed by the Act, as for instance, by reference under section 10(1). These disputes cannot be brought within the purview of section 33C." After the addition of section 2A by Act 15 of 1965, it is no longer necessary for the employees to act collectively to raise an industrial dispute on the question of retrenchment. An individual workman can now take step to raise an industrial dispute relating to his retrenchment. Be that as it may, it is clear from the observation of the Supreme Court that industrial disputes can be adjudicated upon only by a reference under section 10(1) and these disputes cannot be brought within the scope of section 33C(2). In other words, the question which is to be decided by the Labour Court in exercise of its power under section 33C(2) should not be treated as a proceeding in respect of any industrial dispute. Section 33C provides only a speedy remedy to the individual workman to enforce or execute his existing rights. Cases which fall under section 10(1) of the Act cannot, therefore, be brought within the scope of section 33C. Accordingly, a proceeding pending before this Labour Court to determine the amount of money due to individual employees in pursuance of the settlement dated 22nd September, 1964, is not a proceeding in respect of an industrial dispute. Consequently, the bar imposed by sub-sections 1 to 3 of section 33 to terminate the services of his employees as a measure of retrenchment is not operative against the employer. It was, therefore, not necessary either for the Hindustan Steel Limited or its contractor N.S. Corporation to apply to this Labour Court in August, 1966, for permission or approval before effecting retrenchment of its workmen.

4. The Labour Court can exercise jurisdiction under section 33A, Industrial Disputes Act only where an employer has contravened the provision of section 33. In my judgment, there has been no such contravention in the instant case. Consequently, this Labour Court cannot have jurisdiction under the provision of section 33A to adjudicate upon these 109 complaints as if these are disputes referred to it. The complaints are not maintainable in law.

5. The management of Hindustan Steel Limited has submitted in its counter that the concerned workmen were retrenched due to closure of business after making provision for payment of adequate compensation. In *Benaras Ice Factory Limited vs. its workmen* (A.I.R. 1957, Supreme Court, page 168), the Supreme Court pointed out that section 33 applies (there it was section 22 of the Appellate Tribunal Act, 1950, which is similar to section 33, I.D. Act, 1947), only to existing industries and does not include termination of the services of the workmen on a real and bonafide closure of business. Of course, if there is no real closure, but mere pretence of a closure or if the closure is mala fide, there is no closure in the eye of law. In such a case, the workmen can either raise an industrial dispute or complain under section 33A provided other conditions are satisfied. As no evidence has been placed before me to determine whether or not the closure was bonafide and real, it cannot conclusively be predicted at this stage that the employer was not obliged to seek for permission or approval under section 33. But, on the ground that pendency of applications under section 33C(2) for arrears of wages is not pendency of a proceeding in respect of an industrial dispute, these complaints are not maintainable under section 33A. Accordingly, no relief can be afforded by the Labour Court to the complainants in exercise of the jurisdiction under section 33A. It is further to be mentioned that retrenchment of workmen and closure of establishment are matters exclusively within the jurisdiction of Industrial Tribunals. So, this Labour Court even in exercise of its jurisdiction under section 33A cannot adjudicate an industrial dispute relating to retrenchment of workmen. This is obvious from section 7 and the Second and the Third Schedules of the Act.

6. In the result, I come to the conclusion that the complaints are not maintainable in law and the complainants are not entitled to any relief from this Labour Court. All these 109 complaints are dismissed after contest. Each party is directed to bear its own cost. Send this award to the Secretary to the Government of India, Ministry of Labour, Employment and Rehabilitation, New Delhi with a copy to the Secretary, Labour, Employment and Housing Department of the Government of Orissa forthwith.

(Sd.) I. C. MISRA,

21-3-1967,

Presiding Officer,  
Labour Court, Orissa.  
[No. 36/16/67-LRI.]

A. L. HANDA, Under Secy.

